

January 23, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Sapp Brothers Truck Stop

Date of Filing: October 26, 2005

Case No.: TEE-0027

On October 26, 2005, Sapp Bros Truck Stop (Sapp Brothers) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," for the year 2005. As explained below, we have determined that the Sapp Brothers request should be denied.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.¹ The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

¹ 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B² and permits reporting firms to rely on reasonable estimates.³

II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."⁴ Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;⁵ the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;⁶ extreme or unusual circumstances disrupt a firm's activities;⁷ a combination of factors render the reporting requirement an undue burden.⁸

² Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

³ Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

⁴ 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

⁵ *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

⁶ *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

⁷ *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

⁸ *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship warranting relief.⁹ Neither does the fact that a firm is relatively small or that it has filed reports for a number of years constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.¹⁰

III. The Sapp Brothers Application for Exception

Sapp Brothers is a relatively small, publicly-owned motor gasoline retailer headquartered in Omaha, Nebraska. For the first time, beginning in February 1993, Sapp Brothers was designated by EIA as a member of a sample group required to file Form EIA-782B each month for a period of three years.¹¹ Subsequently, the firm was then selected to continue to report by filing the Form for another three year period beginning in August 1998 and was selected again in August 2004.¹² In its exception application, Sapp Brothers states the information needed to file Form EIA-782B is not centrally located and involves retail gasoline sales which are only a small part of its business operations.¹³ The firm further states the information required to file Form EIA-782B is generally available from other public sources and it takes approximately six to ten hours to complete.¹⁴

Based upon a review of the Sapp Brothers Application, we concluded that there was not sufficient information to permit us to act favorably on the exception request. Therefore, we contacted Sapp Brothers to give the firm an opportunity to discuss the request.¹⁵ Mr. Musil stated the firm has 15 different business

⁹ *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

¹⁰ *Mulgrew. Oil Co.*, 20 DOE ¶ 81,009 (1990).

¹¹ Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on November 22, 2005.

¹² Telephone Conversation between Ronald D. Hester, OHA, and Kevin Musil, Sapp Brothers Truck Stop on November 21, 2005.

¹³ Sapp Brothers Application for Exception, submitted to OHA on October 26, 2005.

¹⁴ *Id.*

¹⁵ Telephone Conversation between Ronald D. Hester, OHA, and Kevin Musil, Sapp Brothers Truck Stop on November 21, 2005.

locations but only two employees per location. The firm further stated that it is a small entity; there is only one employee at each location available to complete the Form.¹⁶ Furthermore, the firm asserted that it has had to pay overtime to the employees that were responsible for filing Form EIA 782B. In completing the form, the firm does not use estimates.¹⁷

In reviewing the Sapp Brothers request, we also contacted a representative from the Energy Information Administration (EIA). The EIA representative informed us that Sapp Brothers is a "certainty firm".¹⁸ The representative further stated that certainty firms are of vital importance to the accuracy of the EIA data sample because of their size and extent of the operations.¹⁹

IV. Analysis

Sapp Brothers has not demonstrated that the reporting requirement poses a "special hardship, inequity, or unfair distribution of burdens." Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.²⁰ The burden of this requirement can be substantially reduced by the use of estimates.²¹ In any case, the fact that Sapp Brothers might require a little more time on average does not justify relief.

Sapp Brother's principal argument -- that the firm should not be required to complete Form EIA-782B because the information required to file is generally available from other public sources -- does not provide the basis for an exception.²² The information required by firms to complete the monthly reporting requirement is submitted confidentially -- this data is not available from any private, public, or government source.²³ As discussed above, in order to obtain accurate information about the supply and demand for petroleum products, the EIA selects firms at random, may choose the same firm to participate in

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on November 22, 2005.

¹⁹ *Id.*

²⁰ See Section 10 of General Instructions to Form EIA- 782B.

²¹ See Section 7 of the General Instructions to Form EIA-782B.

²² Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on January 5, 2006.

²³ *Id.*

multiple EIA surveys, and requires data from firms of all sizes. In general, a firm must show that it is adversely affected to a significantly greater degree than other firms of similar size. In the case of certainty firms, such as Sapp Brothers, the requirements to obtain an exception must be compelling.

As the foregoing indicates the firm has not demonstrated that it meets the standards for an exception request. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Sapp Brothers Truck Stop, Case No. TEE-0027, be, and hereby is denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay
Director
Office of Hearings and Appeals

Date: January 23, 2007